

REMARKS

Claims 1-17 are pending.

Applicant affirms the election of Species A--figure 1, with traverse. Claims 1-10 and 14-15 are readable thereon. "Examiners must provide reasons and/or examples to support conclusions." MPEP 803. The Examiner has provided no such reasons and/or examples here to support a conclusion that restriction is proper here. Furthermore, "[c]laims to be restricted to different species must be mutually exclusive. The general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first." MPEP 806.04(f). Here, claims 11-13 and 16 which the Examiner has withdrawn from consideration are all *dependent* on claims which read on the elected claims 1-10 and 14-15. In other words, claim 1 contains no limitations which are not also present in claims 11-13 which depend from claim 1. Thus, claim 1 and each of claims 11-13 are not mutually exclusive. Similarly, claim 14 contains no limitations not also present in claim 16 and thus claims 14 and 16 are not mutually exclusive. Therefore, restriction is improper.

Claims 1-10, 14-16 stand rejected under 35 U.S.C. 112, second paragraph. The Examiner has requested clarification of the meaning of "imparted on the tip of the probe." Claim 1 recites that "the shape of the guide stylet (5) is substantially imparted on the tip area (6) of the probe tube (4) when inserted therein." In other words, when the guide stylet is inserted into the probe tube, the tip area of the probe tube takes on the shape of the stylet because the tip area of the probe tube is more flexible than the

stylet. In the preferred embodiment, the probe tube is straight in the tip area (6), but becomes curved to substantially match the curved shape of the stylet in its tip area (6') when the stylet is inserted therein. See also, specification page 2, paragraph 2.

Claims 1, 2, 5, 6, 8-10 stand rejected under 35 U.S.C. 102(b) as being anticipated by Plassche, Jr. Applicant respectfully traverses this rejection. Plassche, Jr. teaches a catheter with a looped section where said loop is retained by a taut thread or drawstring 76. The shape of Plassche, Jr.'s obturator 50 is not substantially imparted on the tip area of the probe tube when inserted therein, but rather the obturator merely conforms to the shape of the catheter caused by tension on the drawstring 76. Thus, Plassche, Jr. does not disclose that its obturator is curved in the absence of an external force. In contrast, the present invention features a guide stylet (5) with a curved tip area (6') which, in the absence of an external force, substantially imparts this shape on the tip area (6) of the probe tube (4) when inserted therein.

Claims 1, 7 stand rejected under 35 U.S.C. 102(b) as being anticipated by Lemelson. Applicant respectfully traverses this rejection. Lemelson teaches a catheter with a needle 57 which can be urged through and beyond the side of the catheter (column 5, lines 9-14). This needle, whether curved or otherwise, does not impart its shape on the catheter. Thus, Lemelson also does not anticipate the present claims.

Claims 1, 10, 14-15 stand rejected under 35 U.S.C. 102(b) as being anticipated by Bengmark. Applicant respectfully traverses this rejection. Applicant disagrees that Bengmark discloses a guide stylet with a curved tip area. To the contrary, Bengmark's tube 10 has a tendency to coil up and thus insertion into a cavity is only achieved by first straightening-out the tube with an unelastic guide 15. Thus, this guide 15 must be

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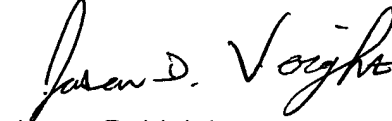
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Respectfully submitted,

KEIL & WEINKAUF

A handwritten signature in black ink, appearing to read "Jason D. Voight". The signature is fluid and cursive, with the first name "Jason" and last name "Voight" clearly distinguishable.

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Marked-up version of amended claims to show changes made.

1. (amended) A probe for [the] small intestines comprising
a probe tube (4) comprising a tip area (6) and a tip (2) having an outlet opening
(1), and
a guide stylet (5) with a shape with a curved tip area (6'),
wherein [the flexibility of] the probe tube (4) and the guide stylet (5) [are] each have a flexibility such that, in the absence of an external force, the shape of the guide stylet (5)
is substantially imparted on the tip area (6) of the probe tube (4) when inserted therein.

9. (amended) The probe [tube] of claim 1, further comprising a [spray] fluid injection connector (7) on the probe tube (4).

~~11.~~ (amended) The probe of claim 1, [further comprising] wherein the probe tube comprises an outer tube and an inner stiffening tube (14) which does not extend into the tip area (6) of the probe tube (4).

14. (amended) A process for delivering fluid to [the] small [intestine] intestines with [the] a probe [of claim 1],

said probe comprising
a probe tube (4) comprising a tip area (6) and a tip (2) having an outlet opening
(1), and

a guide stylet (5) with a shape with a curved tip area (6').
wherein the probe tube (4) and the guide stylet (5) each have a flexibility such that, in
the absence of an external force, the shape of the guide stylet (5) is substantially
imparted on the tip area (6) of the probe tube (4) when inserted therein

said process comprising the steps of

inserting the probe tube (4) into a patient's stomach by way of the patient's esophagus,

inserting the guide stylet (5) into the probe tube (4) thereby causing the shape of the guide stylet (5) to be substantially imparted on the tip area (6) of the probe tube (4),

inserting the tip (2) of the probe tube (4) into the patient's small intestines by way of the patient's pylorus, and

passing the fluid through a lumen (9) and the opening (1) of the probe tube.